

Working for America Act – Comparative Summary

Objective	Current Law	Proposed WFAA	Homeland Security	Defense
Core Principles – Agencies should be able to:				
Assure employees that all personnel decisions will be based on merit principles	Provided by law	Provided by law; no changes proposed	Provided by law; no changes permitted	
Assure employees of due process, basic civil service (whistleblower, anti-discrimination, prohibited personnel practice) protections	Provided by law	Provided by law		
Implement pay-for-performance system when ready	N/A	OPM certifies that agency is ready to implement pay-for-performance system, according to statutory criteria	DHS, OPM jointly prescribe pay-for-performance rules; phased implementation	DoD, OPM jointly prescribe pay-for-performance rules, with phased implementation; must jointly certify expansion above 300,000

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Have a common, comparable set of HR flexibilities	Provides common but limited pay, staffing, other flexibilities that are far short of those provided to DHS, DoD	Provides broad classification, pay, staffing, performance management flexibilities comparable to DHS, DoD	Provides broad classification, pay, performance management, other flexibilities	Provides broad classification, pay, staffing, performance management, other flexibilities

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Classification, Compensation, and Performance: Agencies should be able to:				
Define occupations and work levels to deploy employees more flexibly	Work defined by rigid, narrow criteria, resulting in over-specialization	Work defined by broad occupational groups, pay bands		
For example, 15 GS grades (each with 10 steps) would be collapsed into 3-4 broad levels of work (pay ranges)				
Pay employees based on labor market for particular occupations	One-size-fits-all pay adjustments, without regard to occupational differences	OPM may annually adjust pay by occupation, location	DHS, OPM may annually adjust pay by occupation, location	DoD, OPM may annually adjust pay by occupation, location
Currently, a human resources specialist and a senior scientist both get exactly the same locality adjustment, regardless of local labor market pay rates				
Limit annual market pay adjustments to satisfactory employees	Employees whose performance is rated “Unacceptable” receive same pay adjustments as top performers	Only “Fully Successful” or better employees are eligible for pay adjustments		
Last year, any employees whose performance was rated "Unacceptable" received a pay increase of about 3.5 percent				

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Clarify means of communicating expectations to employees	Standards and critical elements of the employee’s position communicated at the beginning of the performance year	Requires written performance expectations, allowing amplification through work assignments and other instructions	All relevant performance expectations to be written	Supervisors and managers will communicate expectations to employees
Pay employees according to their performance	Individual pay increases based on longevity; mediocre and top employees receive same standard within-grade raises	Individual increases based on performance		
Currently, a senior GS-9 employee with an “Outstanding” rating may have to wait 3 years for a 3% within-grade increase, while a brand new employee at the same grade with only a “Fully Successful” rating gets a 3% step increase every year over the same period				
Customize system to meet unique mission requirements	Monolithic system; little deviation permitted	Agencies may customize “core” system, subject to OPM approval	DHS, OPM jointly prescribe agency-unique system	DoD, OPM jointly prescribe agency-unique system
Meet premium pay (overtime, etc.) obligations	Complex, inconsistent premium pay laws increase costs, liabilities	OPM can rationalize premium pay laws via rule-making	N/A	DoD, OPM can rationalize premium pay laws via rule-making
Currently, law enforcement personnel on an inter-agency task force may be subject to several different overtime rules				

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Accountability – Managers should be able to:				
Give employees full due process	Assured	Assured		
Deal quickly, but fairly with poor performers	Paper-intensive, lengthy “grace period” required. However, action is sustained if based on “substantial evidence” standard, with no mitigation by MSPB, arbitrators permitted	Same process as misconduct-based action. Removal for poor performance must be based on higher “preponderance of evidence” standard, with mitigation by MSPB, arbitrators permitted (see below)		
Current law gives poor performers an extended period to improve before they can be fired/demoted, even if they fail repeatedly during that period				
Decide the appropriate penalty for misconduct	MSPB, arbitrators may mitigate penalty based on lesser factors than mission impact	MSPB, arbitrators may mitigate penalty, but <u>must</u> give impact on agency mission primary consideration	Mitigation only if penalty “wholly without justification”	Mitigation only if penalty “wholly without justification”
MSPB found a manager fired for deceiving a congressional delegation guilty as charged, but concluded she was just trying to make the agency look good and reduced the penalty				

Establish certain “zero tolerance” offenses that require employee’s removal	Agency must justify removal on case-by-case basis	Retains current law	Secretary can establish Mandatory Removal Offenses; only Secretary can mitigate	Secretary can establish Mandatory Removal Offenses; only Secretary can mitigate
Have employee appeals resolved impartially	Merit Systems Protection Board (MSPB) adjudicates employee appeals	Retains current law	MSPB adjudicates appeals, except for Mandatory Removal Offenses...those are heard by Panel appointed by Secretary	MSPB reviews final DoD decision using narrow criteria
Have appeals decided quickly, consistently	MSPB may grant summary judgment when facts not in dispute	Streamlined—summary judgment, discovery, and filing deadlines		
Current law requires a hearing in every case, even if an Administrative Judge concludes that no facts are in dispute; it also precludes MSPB members from meeting amongst themselves to discuss and deliberate on a pending case				

* The proposed legislation makes minimal changes to current adverse action and appeals statutes

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Hiring – Managers should be able to:				
Preserve veterans' preference	Preserved	Preserved		
Target recruiting efforts	Everyone who applies must be considered	Allows localized, targeted recruiting	N/A	Allows localized, targeted recruiting
Currently, thousands of “casual candidates” apply to Web-based announcements; all must be evaluated, rated and ranked, lengthening an already-protracted hiring process and trying the patience of serious candidates				
Create new tools to attract, hire talent (scholarships, internships, etc.)	New hiring tools require an Act of Congress	OPM can create new hiring tools	N/A	DoD, OPM can create new hiring tools
Without an Act of Congress, OPM cannot give DoD authority to hire spouses of disabled veterans for jobs near VA hospitals				
Use temporary appointments to meet mission requirements	Limited to short-term (1-2 year) projects	Allows longer (3-5 year) temporary appointments	N/A	Allows longer (3-5 year) temporary appointments

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Collective Bargaining – Agencies should be able to:				
Issue personnel rules that are binding on components	Must bargain with local unions	Retains current law	No bargaining required	No bargaining required
Establish work assignment procedures	Must bargain with local unions	Retains current law	No bargaining required	No bargaining required
Introduce new technology	Must bargain with local unions in advance over implementation and impact	Retains current law	No advance bargaining on implementation and impact	No advance bargaining on implementation and impact
Resolve labor disputes quickly and with finality	Federal Labor Relations Authority adjudicates disputes	FLRA adjudicates disputes using streamlined process	Homeland Security Labor Relations Board appointed by Secretary	National Security Labor Relations Board appointed by Secretary
Current law requires as many as three separate, sequential processes to resolve bargaining disputes...and can sometimes take years				
Act quickly to prepare for or prevent an emergency	Must first bargain with unions	No bargaining required		
Under current law, the Centers for Disease Control cannot conduct a “no notice” bioterror exercise without first bargaining with its unions				

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Determine pay-for-performance rules	Must first bargain with unions	No bargaining required		
Current law allowed Department of Education’s union to veto a proposed pay-for-performance system				
Make minor changes in working conditions	Must first bargain with unions, even if change is trivial	No bargaining required		
Proposed legislation reflects current FLRA and private sector case law on bargaining over minor changes, but unions continue to challenge				
Have work-related meetings with groups of employees	Union must be present	No union representation if purpose of meeting is operational		
Current law requires a manager to wait for a union representative before meeting with employees to reiterate unit’s tardiness policy				

* The proposed legislation makes very targeted changes to current labor relations statute; no changes to current law have been proposed to existing statutory provisions dealing with employee rights, definitions, the composition of the Authority, exclusive recognition of labor organizations, determination of appropriate bargaining units, national consultation rights, union representation in investigatory interviews, allotments to labor organizations, the release of information to labor organizations, unfair labor practices, negotiation impasses, standards of conduct for labor organizations, negotiated grievance procedures, exceptions to arbitral awards, and judicial review and enforcement.